

ORDINANCE NO. 09-103

ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA CONSENTING TO A SUBLEASE OR SITE LICENSE AGREEMENT BETWEEN T-MOBILE SOUTH LLC AND CLEAR WIRELESS LLC TO ALLOW CLEAR WIRELESS LLC TO CO-LOCATE ITS WIRELESS COMMUNICATIONS FACILITY WITH T-MOBILE SOUTH LLC ON THE MONOPOLE COMMUNICATIONS TOWER LOCATED AT BABCOCK PARK AND FURTHER AUTHORIZING THE MAYOR AND THE CITY CLERK, AS ATTESTING WITNESS, ON BEHALF OF THE CITY, TO ENTER INTO A CO-LOCATION WIRELESS COMMUNICATIONS FACILITY LEASE AGREEMENT WITH CLEAR WIRELESS LLC, A NEVADA LIMITED LIABILITY COMPANY, A COPY OF WHICH IS ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "1"; FOR AN ANNUAL RENTAL FEE OF \$7,650.00, WHICH REPRESENTS 50% OF THE RENT DUE T-MOBILE SOUTH UNDER ITS LEASE WITH CLEAR WIRELESS; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, City and Omnipoint Holdings, Inc., a Delaware corporation, now known as T-Mobile USA, Inc and further assigned to T-Mobile South, LLC, a Delaware limited liability company, ("T-Mobile") entered into a lease agreement dated June 20, 2003 pursuant to Hialeah, Fla., Ordinance 03-54 (June 19, 2003) as renewed for an additional five years pursuant to Hialeah, Fla., Ordinance 08-40 (May 14, 2008), (collectively the "Ground Lease" or "Prime Lease"); whereby T-Mobile leased a portion of the for the purpose of constructing, operating and maintaining a communications facility and uses incidental thereto, including a 95-foot monopole and all necessary connecting appurtenances, at Babcock Park located at 651 East 4 Street, Hialeah, Florida; and

WHEREAS, Clear Wireless desires to sublease from T-Mobile both ground space and tower space to install, maintain and operate Clear Wireless' communications facility on the Babcock Park communications tower; and

WHEREAS, City desires to consent to Site License Agreement (“SLA”) between T-Mobile and Clear Wireless; and

WHEREAS, Clear Wireless desires to enter into a lease agreement with the City to permit the co-location with T-Mobile South on the Babcock Park communications tower and the City likewise agrees to enter into a lease in the best interest of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1: The foregoing facts and recitations contained in the preamble to this ordinance are hereby adopted and incorporated by reference as if fully set forth herein.

Section 2: The City of Hialeah, Florida hereby consents to a sublease or Site License Agreement between T-Mobile South LLC and Clear Wireless LLC to allow Clear Wireless LLC to co-locate its wireless communications facility with T-Mobile South LLC on the monopole communications tower located at Babcock Park and further authorizes the Mayor and the City Clerk, as attesting witness, on behalf of the City, to enter into a Co-Location Wireless Communications Facility Lease Agreement with Clear Wireless LLC, a Nevada limited liability company, a copy of which is attached hereto and made a part hereof as Exhibit “1”, for an annual rental fee of \$7,650.00, which represents 50% of the rental fee due T-Mobile South under its lease with Clear Wireless.

Section 3: Repeal of Ordinances in Conflict.

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 4: Penalties.

Every person violating any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be assessed with a civil penalty

not to exceed \$500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty described above, the City may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.

Section 5: Severability Clause.

If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

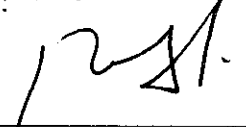
Section 6: Effective Date.

This ordinance shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

PASSED and ADOPTED this 22nd day of December, 2009.

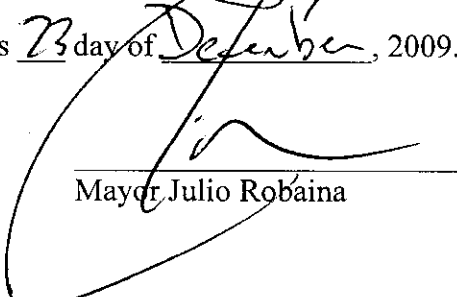
THE FOREGOING ORDINANCE
OF THE CITY OF HIALEAH WAS
PUBLISHED IN ACCORDANCE
WITH THE PROVISIONS OF
FLORIDA STATUTE 166.041
PRIOR TO FINAL READING.

Attest:

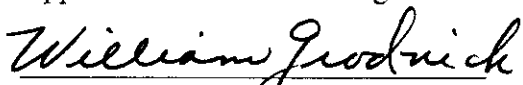

Rafael E. Granado, City Clerk


Jose Yedra
Council Vice President

Approved on this 23 day of December, 2009.


Mayor Julio Robaina

Approved as to form and legal sufficiency:


William M. Grodnick, City Attorney

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Ordinance was adopted by a 6-0 vote with Councilmembers, Caragol, Casals-Muñoz, Cue, Garcia-Martinez, Gonzalez, Yedra voting "Yes", Councilmember Hernandez absent.